

**IN THE UNITED STATES DISTRICT COURT
FOR THE STATE OF NEW MEXICO**

**STATE OF NEW MEXICO, *ex rel.*
State Engineer**

Plaintiff,

v.

RAMON ARAGON, *et al.*,

Defendants.

69cv07941 JEC-ACE

**RIO CHAMA STREAM SYSTEM
Rio Gallina, Section 5**

**PREHEARING ORDER FOR LITIGATION OF
REMAINING INDIVIDUAL SUBFILES AND WATER RIGHTS CLAIMS
IN SECTION 5 OF THE RIO CHAMA STREAM SYSTEM**

This Order is entered pursuant to F.R.Civ. P. 16, 26 and 53 and D.N.M.LR-Civ. 26 and 30, to guide the litigation of disputed elements of water rights claims for the remaining unresolved individual subfiles and water rights claims in Section 5 of the Rio Chama Stream System. The subfiles and claims have been divided into two groups for scheduling purposes as follows:

GROUP “A” DEFENDANTS

1. CHGA-001-0018 Wille A. Suazo
HC 78, Box 15
Gallina, NM 87017
2. CHGA-002-0027B Gabriel Maestas, Jr., Mary Ann Maestas
P.O. Box 5
Gallina, NM 87017
3. CHGA-002-0042 Vincente Jacquez
c/o Mary Espinosa
P.O. Box 164
Gallina, NM 87013

4. CHGA-00-0029 Vivian Salazar
1118 Calle la Resolana
Santa Fe, NM 87505-5115
5. CHGA-002-0048 Sam Chavez, Aurelia Chavez
P.O. Box 115
Gallina, NM 87017
6. CHGA-003-0001A Eugenio Sanchez Estate
c/o Corine Jacquez Gonzales
843 Old Santa Fe Trail
Santa Fe, NM 87501
7. CHGA-003-0003A, CHGA-003-0003B, CHGA-003-0003C, CHGA-003-0003D, CHGA-003-0004A, CHGA-003-0004B, CHGA-003-0005

Faye Davis
P.O. Box 170
Gallina, NM 87017
8. CHGA-003-0007 Juan C. Chavez, Patsy L. Chavez
P.O. Box 152
Gallina, NM 87017

Jose P. Chavez, Piedad Chavez
506 Old Hospital Road
Espanola, NM 87532
9. CHGA-003-00018 Arcelia Chacon, Cosme L. Chacon
P.O. Box 43
Gallina, NM 87017
10. CHGA-003-0019 Jose Z. Chacon, Lucinda Chacon
P.O. Box 58
Gallina, NM 87017
11. CHGA-003-0030 Herman Jacquez, Alvin N. Jacquez
P.O. Box 27
Gallina, NM 87017

12. CHGA-004-0001A Helen Vigil
P.O. Box 234
El Rito, NM 87530
Linda Vigil
P.O. Box Wynview Ct. NW
Albuquerque, NM 87120

Olivia Vigil
P.O. Box 592
Espanola, NM 87532
13. CHGA-004-0002 Tommy F. Chacon
P.O. Box 106
Gallina, NM 87017

GROUP “B” DEFENDANTS (“Omitted Claims”)

1. OMC-016 Faye Davis
P.O. Box 170
Gallina, NM 87017
2. OMC-029 Eli Maestas
P.O. Box 2025
Kirtland, NM 87417
3. OMC-031 Francis Chavez, Leo Chavez
P.O. Box 711
Cuba, NM 87013
4. OMC-032 Onofre Sanchez, Tomas Sanchez
P.O. Box 44
Gallina, NM 87017
5. OMC-033 Julian Vigil, Mary Vigil, Robert Vigil
P.O. Box 108
Gallina, NM 87017
6. OMC-034 Abram Cordova
P.O. Box 91
Gallina, NM 87017

7. OMC-039 Estate of Eduvigen Serrano
c/o Geraldine Serrano Lopez
P.O. Box 575
Santa Cruz, NM 87567
8. OMC-042 Martha Cordova
P.O. Box 570
Gallina, NM 87017
9. OMC-047 Jose L. Chacon
P.O. Box 95
Gallina, NM 87017

This adjudication is in the subfile phase, and the proceedings subject to this order are limited subfile proceedings. Therefore, the State of New Mexico *ex rel.* State Engineer and the defendants named above are the only parties to this action, and are the only parties that will be allowed to participate at a disputed subfile hearing unless otherwise ordered by the Court. The State is represented by Mr. Ed Newville. The defendants named above are *pro se*. Defendants who retain an attorney for purposes of the trial shall inform the State and Special Master as soon as possible of this fact, and such counsel shall immediately enter his or her appearance in the record.

I. BURDEN OF PROOF and DESCRIPTION OF CLAIMS

Each defendant has the burden of proving all elements of his or her water rights claim. On or before **June 3, 2002**, each **Group “A” defendant** shall provide the State with a description of the amount and location of claimed irrigated acreage that differs from the description of water rights included in the State’s proposed consent order. Defendants shall mark the approximate boundaries of the claimed irrigated acreage on an aerial photograph subfile map provided by the State, and shall provide a copy of the map showing the claimed acreage to the State.

Group “B” defendants shall provide the State with a description of the amount and location of claimed irrigated acreage that differs from the description of water rights included in the State’s proposed consent order within 30 days of receiving a proposed order and aerial photograph subfile map. The State shall prepare and serve a proposed consent order on Group “B” defendants no later than **July 1, 2002**.

II. DISCOVERY

Discovery begins immediately. All parties are expected to adhere to the F.R.Civ.P. 26 requirements of liberal, continuing and voluntary disclosure. No later than **June 17, 2002**, the State and **Group “A” defendants** shall exchange:

(A) the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses.

(B) a copy of, or a description by category and location of, all documents, data compilations and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses.

The State and **Group “B” defendants** shall exchange the above information no later than **July 30, 2002**.

The State and all defendants shall promptly file a certificate of service of the completion of the above disclosures with the Court.

No later than **June 17, 2002**, all defendants shall upon the request of the State, and within 15 days of any such request, permit entry upon any claimed irrigated acreage for purposes of inspection, measuring and photography of the property.

III. PRETRIAL DISCLOSURES

The State and **Group “A” defendants** shall disclose the identity of any person who may be used at trial to present expert witness testimony by **September 2, 2002**. This disclosure shall be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; and exhibits to be used as a summary of or support for the opinions; and the qualifications of the witness, including a list of all publications authored by the witness with the preceding ten years; the compensation to be paid for the study and testimony; and a list of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years. The State and **Group “B” defendants** shall disclose and exchange the above information no later than **October 1, 2002**.

Rebuttal expert witness, if any, shall be identified within 30 days of the disclosure of expert witness. The disclosure of rebuttal expert witnesses shall be accompanied by a report conforming to the requirements set out above for expert witness reports.

The State and all defendants shall promptly file a certificate of service of the completion of the above disclosures with the Court.

No later than **October 15, 2002**, the State and **Group “A” defendants** shall submit to the Special Master the following information regarding evidence that they may present at trial, other than evidence to be used solely for impeachment:

(A) the name and the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises.

(B) the designation of those witness whose testimony is expected to be presented by means of a deposition.

(C) identification of each document or other exhibit separately identifying those which the party expects to offer and those which the party may offer if the need arises.

The State and **Group “A” defendants** shall by **October 15, 2002** exchange copies of all exhibits identified where feasible. In the cases of oversize exhibits, original photographs or similar exhibits where an exchange of copies is not feasible, a party shall provide those exhibits for inspection upon informal request.

The State and **Group “B” defendants** shall submit to the Special Master the above information, and exchange copies of listed exhibits where feasible, no later than **November 15, 2002**.

The State and all defendants shall promptly file with the Court a certificate of service of the completion of the above submittals to the Special Master.

No witness will be permitted to testify and no exhibits or other evidence may be introduced at trial unless disclosed according to the deadlines set forth above; that is, **October 15, 2002**, for the State and **Group “A” defendants**, and **November 15, 2002**, for the State and **Group “B” defendants**.

Discovery for all parties shall be completed no later than **December 16, 2002**. Service of interrogatories, requests for admission, or requests for production shall be considered timely only if the responses are due prior to that date. A notice of deposition shall be considered timely only if the deposition occurs prior to that date.

Motions for extensions of, or changes to, discovery deadlines are necessary only where the parties cannot agree. Agreements shall be memorialized by letter to the parties and to the Special Master.

No later than **December 16, 2002**, the parties shall provide (not file) a copy of each expert witness report, including rebuttal expert witness reports (if any) to the Special Master.

The deadline for filing any dispositive motion or written objection to a proposed exhibit and motions in limine is **December 16, 2002**. Objections to proposed exhibits, together with a brief statement of the grounds therefor, shall be served and filed with the Court by **December 16, 2002**. Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, are waived unless excused by the Court for good cause.

IV. LIMITED SERVICE

Unless otherwise requested, service of discovery materials and corresponding certificates of service is limited to the subfile parties (the defendant and the State) and counsel for the acequia association. Service of motions and briefs shall be to the Section 5 distribution list.

V. HEARINGS

Beginning **October 15, 2002**, the State may submit requests for hearing in subfiles where the exchange of the information described above has been completed. A request for hearing may group subfiles and claims according to common issues and/or witnesses when possible, and may be submitted in groups of 3 to 4 or more subfiles. The Special Master will hold a separate final pretrial conference for each group of disputed claims at a time and place to be announced. Prior to holding a final pretrial conference, but after the State has submitted a request for hearing, the parties shall meet to discuss preparation of a consolidated exhibit list and exhibits to be used at trial.

VI. COMPLETION OF HEARINGS

All hearings on Section 5 disputed subfiles and omitted claims will be concluded no later than **March 31, 2003.**

VII. OBJECTIONS TO THIS ORDER

Any objections to this Prehearing Order shall be filed with the Court, and served on the State and the above-named Defendants, within 10 days of receipt of this Order. Questions may be directed to :

Edward G. Newville, Esq.
Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
505/827-6150
800-928-3766 Toll-free

Mary Humphrey, Esq.
P.O. Box 1574
El Prado, NM 87529
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Darcy S. Bushnell, Esq.
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USDC-DCNM
333 Lomas Blvd. NW, Box 270
Albuquerque, NM 87102-2272
505/348-2212

IT SO ORDERED.

_____/electronic signature/
VICKIE L. GABIN, SPECIAL MASTER